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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,512	07/02/2003	Carl J. Conforti	05/01 CC	3523

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CARL J. CONFORTI  
30 RIVER VIEW ST.  
FALL RIVER, MA 02724

EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/612,512	CONFORTI, CARL J.
	<b>Examiner</b>	<b>Art Unit</b>
	Gail Verbitsky	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on preliminary amendment filed on 04/20/04.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 19-38 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 19-21,27-31 and 36-38 is/are rejected.  
7)  Claim(s) 22-26 and 32-35 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Objections***

1. Claims 22, 36 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Nomura et al. (U.S. 5588748) [hereinafter Nomura].

Nomura discloses in Fig. 3 a temperature measuring device comprising a housing 2 including a main portion A configured to be grasped by a person, a temperature probe B retained by the housing/ attached to the housing and configured to sense temperature, the probe extending from the main portion of the housing for insertion onto a surface area of a patients' body/ tympanic cavity where the desired body temperature is to be measure. The device also comprises a thin round strip of a thin film (flexible) 4 coupled to the temperature probe and thus, to the housing and configured to cover at least a portion of the temperature probe configured to be in

contact with the patients' cavity. (the numerals A-B have been added by the examiner, see attachment to the Office Action).

4. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Schwab (U.S. 3650153):

Schwab discloses in Fig. 5 a temperature measuring device comprising a housing/ tube/ probe body 24 including a main portion/ stop 36 configured to be grasped by a person, a temperature probe portion retained (within) by the housing 24 configured to sense temperature, the probe extending from the main portion 36 of the housing 24 for insertion onto a surface area of a patients' body where the desired body temperature is to be measure. The device also comprises a thin round strip of a thin elastic (flexible) probe cover 52 coupled to the distal end of the temperature probe and to the housing and configured to cover at least a portion of the temperature probe configured to be in contact with the patients' cavity.

5. Claims 19-20, 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahler et al. (U.S. 6450970) [hereinafter Mahler].

Mahler discloses in Figs. 6 a temperature-measuring device comprising a housing including a main portion configured to be grasped by a person, a temperature probe attached to the housing and configured to sense temperature, the probe is extending from the main portion of the housing to be inserted into a patient's tympanic cavity/ orifice. The device also comprises a light source 160 coupled to the housing and configured, along with a mirror 164 to illuminate a region/ provide light in the vicinity of the probe/ in front of the probe (eardrum) and thus, inherently, to assist to the user to

proper position the device within the cavity and to assess the inflammatory process. The illuminating source 160 is a bulb. The illuminating source 160 can be independently and selectively operated/ activated by a switch. The device also comprises a temperature sensitive means and a display for visual temperature indication.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al. (U.S. 6626568) [hereinafter Sato] in view of Japanese patent application No. Hei. 7-286905 described by Sato in col. 1, lines 24-29 [hereinafter Prior Art].

Sato discloses in Fig. 1A a housing 2 including a main portion 2 configured to be grasped by a person, a temperature probe retained by the housing/ attached to the housing and configured to sense temperature, the probe extending from the main portion 2 of the housing for insertion onto a surface area of a patients' body/ tympanic cavity where the desired body temperature is to be measured. The probe includes a temperature-sensing means 6, 8 and a display 4.

Although Sato is concerned with a correct positioning of the device into the cavity, Sato does not explicitly teach an illuminating source, as stated in claims 19 and 27.

Prior Art teaches to add an illuminating device to a clinical thermometer so as to confirm a proper position of an eardrum/ thermometer (vicinity disposed distally from the end of the probe/ temperature-sensing means) before measurements start.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add an illuminating device, as taught by Prior Art, to the device disclosed by Sato, in order to illuminate the position of the eardrum relative to the thermometer, and thus, to be able to adjust/ correct the position of the thermometer, prior to initiating of the measurements, so as to provide more accuracy by maintaining a proper positioning of the thermometer.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler in view of Pitts (U.S. 6435689).

Mahler discloses the device as stated above in paragraph 5.

Mahler does not teach illuminating ink on the housing of the device, as stated in claim 29.

Pitts teaches to put a luminescent coating (illuminating ink) onto a surface of a device to make the device illuminate in dark.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the illuminating means in the device, disclosed by Mahler, with an illuminating coating to the housing, as taught by Pitts, because both of them are alternate types of illuminating means which will perform the same function,

of illuminating an interior space they are inserted in and thus, a surface of interest, if one is replaced with the other.

9. Claims 21 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler in view of Lebens et al. (U.S. 20030095406) [hereinafter Lebens].

Mahler discloses the device as stated above in paragraph 5.

Mahler does not explicitly teach a replaceable bulb, and that the bulb is a LED.

Lebens discloses a device wherein an illumination source is an LED which can be replaced.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Mahler, so as to make the bulb replaceable, as taught by Lebens, so as to allow the user to replace it when it does not produce illumination, in order to provide the device with the illumination source needed for a proper use of the device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bulb in the device disclosed by Mahler, with an LED, as taught by Lebens, because both of them are alternate types of illuminating sources which will perform the same functions, of delivering light to a surface of interest, if one is replaced with the other.

10. Claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwab in view of Mahler.

Schwab discloses the device as stated above in paragraph 4.

Schwab does not teach an illuminating source, as stated in claim 36 and the limitations of claim 37.

Mahler discloses in Fig. 6 a device comprising an illuminating source 160 which is independently and selectively operated/ activated by a switch.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add an illuminating source, as taught by Mahler, to the device disclosed by Schwab, so as to be able to illuminate the surface of interest, when needed, especially when the temperature measurements are taken in a dark room.

11. Claim 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Schwab and Mahler as applied to claims 36-37 above, and further in view of Lebens.

Schwab and Mahler disclose the device as stated above in paragraph 10.

They do not explicitly teach the bulb is a LED.

Lebens discloses a device wherein an illumination source is an LED.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bulb in the device disclosed by Schwab and Mahler, with an LED, as taught by Lebens, because both of them are alternate types of illuminating sources which will perform the same functions, of delivering light to a surface of interest, if one is replaced with the other.

***Allowable Subject Matter***

12. Claims 22-26, 32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

*Gail Verbitsky*

*Primary Patent Examiner, TC 2800*

*G. Verbitsky*

May 13, 2004